

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1548

INTRODUCER: Appropriations Committee; Education Committee; and Senator Book

SUBJECT: K-12 Student Safety

DATE: March 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Androff</u>	<u>Graf</u>	<u>ED</u>	Fav/CS
2.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1548 modifies Florida law regarding educator certification requirements and district school board duties relating to school safety and prohibits misconduct by authority figures against students. Specifically, the bill:

- Expands the applicability of certain employment disqualification criteria to include all positions that require direct contact with students.
- Grants the Department of Education (DOE) and the Education Practices Commission additional authority to enforce the educator certification requirements and impose penalties against persons who do not comply with certification requirements.
- Requires an educator who has been placed on probation to immediately notify the investigative office in the DOE upon separation from employment in any public or private position requiring a Florida educator's certificate.
- Deems offenses against students by authority figures as a second-degree felony.
- Adds a school bus to the definition of "school," to apply to the provisions in law regarding trespass on school grounds or facilities.
- Revises standards of ethical conduct for instructional personnel and school administrators to require training to cover misconduct that involves specified conduct that would result in disqualification from educator certification or employment.
- Requires a school district to:
 - File in writing with the DOE all legally sufficient complaints against teachers and administrators, regardless of whether the subject of the complaint is still a district employee.

- Immediately notify the DOE if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the district investigation.
- Requires a district school superintendent to:
 - Report misconduct by instructional personnel or school administrators that would result in a disqualification from educator certification or employment to the law enforcement agencies with jurisdiction over the conduct. Provides that a superintendent who knowingly fails to report misconduct to law enforcement agencies must forfeit his or her salary for one year after the date of such failure to act.
 - Notify the parent of a student who was subjected to or affected by specified misconduct within a specified timeframe.
- Requires the resignation or termination of an employee before the conclusion of an alleged misconduct investigation affecting the health, safety, or welfare of a student to be clearly indicated in the employee's personnel file.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Educator Certification Requirements

The purpose of Florida educator certification is to protect the educational interest of students, parents, and the public at large by assuring that Florida educators are professionally qualified for highly effective instruction.¹ The Legislature has established certification requirements to assure that educational personnel in public schools possess appropriate skills in reading, writing, and mathematics, and adequate pedagogical knowledge and relevant subject matter competence to demonstrate an acceptable level of professional performance.² Further, the Legislature has established a certificate renewal process that promotes the continuing professional improvement of school personnel, thereby enhancing public education in all areas of the state.³

Florida law provides that a person who has been convicted of an offense specified in law is ineligible for educator certification, and instructional personnel and school administrators are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts certain state scholarship students.⁴

Florida law also requires each person who has obtained an educator certification to agree, under penalty of perjury, to inform his or her employer if convicted of any disqualifying offense while he or she is employed in a position for which such certification is required.⁵

¹ Section 1012.54, F.S.

² *Id.*

³ *Id.*

⁴ Section 1012.315(1), F.S.

⁵ Section 1012.56(10)(b), F.S.

Educator Discipline

The Education Practices Commission (Commission) is established in Florida law to interpret and apply the standards of professional practice established by the State Board of Education (SBE).⁶ The Commission is authorized to revoke or suspend a certificate or take other appropriate action as provided in law.⁷

Specifically, the Commission may revoke or suspend the educator certification if the person:

- Obtained or attempted to obtain an educator certificate by fraudulent means.
- Knowingly failed to report actual or suspected child abuse or report alleged misconduct by instructional personnel or school administrators that affects the health, safety, or welfare of a student.
- Has proved to be incompetent to teach or perform duties as an employee of the public school system or to teach in or operate a private school.
- Has been guilty of gross immorality or an act involving moral turpitude as defined by SBE rule.
- Has had an educator certificate sanctioned by revocation, suspension, or surrender in another state.
- Has been convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.⁸

Florida law provides that the Department of Education (DOE) may deny an applicant a certificate if the department possesses satisfactory evidence that the applicant has committed an act, or that a situation exists, for which the Education Practices Commission would be authorized to revoke a teaching certificate.⁹ The decision of the DOE is subject to review by the Education Practices Commission upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.¹⁰

Educator Certification Reporting Requirements

Each district school superintendent and the governing authority of each university lab school, state-supported school, private school, and the Florida High School Athletic Association must report to the DOE the name of any Florida certified educator who:

- Has been convicted of, or who has pled nolo contendere to, a misdemeanor, felony, or any other criminal charge, other than a minor traffic infraction;
- That official has reason to believe has committed, or is found to have committed, any act which would be a ground for revocation or suspension of a Florida Educator Certification;
- Has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.¹¹

⁶ Section 1012.79(7)(a), F.S. The SBE has established principles for professional conduct for the Education Profession in rule. Rule 6A-10.081, F.A.C.

⁷ Section 1012.79(7)(b), F.S.

⁸ Section 1012.795(1), F.S.

⁹ Section 1012.56(12)(a), F.S.

¹⁰ Section 1012.56(12)(b), F.S.

¹¹ Section 1012.795(5), F.S.

Florida law also requires an educator certificate holder to inform his or her employer within 48 hours if convicted of any disqualifying offense while employed in a position that requires the certification.¹²

Ethical Conduct of Instructional Personnel and School Administrators

Florida law provides that each district school board must adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.¹³ The policies must require all instructional personnel and school administrators to complete specified training.¹⁴ Florida law also provides that the felony degree of a violation for specified sexual offenses must be enhanced if the offense is committed by an authority figure of a school against the student of the school.¹⁵

III. Effect of Proposed Changes:

The bill modifies Florida law regarding educator certification requirements and district school board duties relating to school safety and prohibits misconduct by authority figures against students. Specifically, the bill:

- Expands the applicability of certain employment disqualification criteria to include all positions that require direct contact with students.
- Grants the Department of Education (DOE) and the Education Practices Commission with additional authority to enforce the educator certification requirements and impose penalties against persons who do not comply with certification requirements.
- Requires an educator who has been placed on probation to immediately notify the investigative office in the DOE upon separation from employment in any public or private position requiring a Florida educator's certificate.
- Deems offenses against students by authority figures as a second-degree felony.
- Adds a school bus to the definition of "school," to apply to the provisions in law regarding trespass on school grounds or facilities.
- Revises standards of ethical conduct for instructional personnel and school administrators to require training to cover misconduct that involves specified conduct that would result in disqualification from educator certification or employment.
- Requires a school district to:
 - File in writing with the DOE all legally sufficient complaints against teachers and administrators, regardless of whether the subject of the complaint is still a district employee.
 - Immediately notify the DOE if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the district investigation.
- Requires a district school superintendent to:
 - Report misconduct by instructional personnel or school administrators that would result in a disqualification from educator certification or employment to the law enforcement

¹² Section 1012.56(10)(b), F.S.

¹³ Section 1012.42

¹⁴ *Id.*

¹⁵ Section 775.0862, F.S. Authority figure means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

- agencies with jurisdiction over the conduct. Provides that a superintendent who knowingly fails to report misconduct to law enforcement agencies must forfeit his or her salary for one year after the date of such failure to act.
- Notify the parent of a student who was subjected to or affected by specified misconduct within a specified timeframe.
 - Requires the resignation or termination of an employee before the conclusion of an alleged misconduct investigation affecting the health, safety, or welfare of a student to be clearly indicated in the employee's personnel file.

Educator Certification Requirements (Section 7)

Section 7 amends s. 1012.315, F.S., to expand the conditions for disqualification from employment to clarify that if a person has been convicted of an offense specified in law, the person is ineligible for educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts specified state scholarship students. These changes may assist the school districts with their efforts to maintain a safe learning environment for students.

Educator Discipline (Sections 8 and 9)

Section 9 amends s. 1012.795, F.S., to authorize the Education Practices Commission (Commission) to *deny* an application for certification in addition to the Commission's existing authority to *suspend* an educator certificate of any educator certificate holder. This section modifies the conditions under which the Commission is authorized to take disciplinary action to provide that the Commission is authorized to discipline a person who:

- Has been guilty of gross immorality or an act involving moral turpitude, including engaging in or soliciting sexual, romantic, or lewd conduct with a student or minor.
- Has had any professional license sanctioned by Florida or any other state, or has had the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including a denial of certification or licensure, by the licensing or certifying authority of any jurisdiction, including its agencies and subdivision. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder shall be construed as action against the license or certificate.
- Regardless of adjudication, has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to a misdemeanor, a felony, or any other criminal charge other than a minor traffic violation.
- Has violated test security rules as provided in law.¹⁶

The authorization to deny an application for certification also applies to existing conditions under which the Commission is authorized to take disciplinary action.¹⁷

Section 8 amends s. 1012.56, F.S., to authorize the Department of Education (DOE) to deny an applicant a certificate if DOE possesses satisfactory evidence that the applicant has committed an

¹⁶ Section 1008.24, F.S., specifies the test administration and security rules.

¹⁷ See s. 1012.795(1), F.S.

act, or that a situation exists, for which the Commission would be authorized to discipline a certified educator. As provided in current law, the decision of the DOE is reviewable upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.¹⁸ This section provides that, upon review of the DOE's decision, the Commission may deny the award of a certificate, bar an applicant from reapplying for a certificate, or allow the awarding of a certificate with one or more of the following conditions:

- Probation for a period of time.
- Restriction of the scope of practice.
- Issuance of a letter of reprimand.
- Referral of the teacher, administrator, or supervisor to the recovery network program under such terms and conditions as the commission may specify.
- An administrative fine not to exceed \$2,000 for each count or separate offense.

Accordingly, the bill provides the DOE and the Commission with additional authority to enforce the educator certification requirements and impose penalties against persons who do not comply with the specified certification requirements or assessment administration protocol.

Educator Certification Reporting Requirements (Section 9)

Section 9 amends s. 1012.795, F.S., to modify the information that each district school superintendent and the governing authority of each university lab school, state-supported school, private school and the Florida High School Athletic Association must report to the DOE to add the name of any educator certificateholder who has been found *guilty of*, who has had *adjudication withheld*, or who has *pled guilty* to a misdemeanor, a felony, or any other criminal charge, other than a minor traffic infraction. These changes may assist the school districts with their efforts to maintain a safe learning environment for students.

Notification by Educator on Probation (Section 10)

Section 10 amends s. 1012.796, F.S., to require a school district to:

- File in writing with the DOE all legally sufficient complaints against teachers and administrators, regardless of whether the subject of the complaint is still a district employee.
- Immediately notify the DOE if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the district investigation. The DOE must then place an alert on the subject's certification file.

Ethical Conduct of Instructional Personnel and School Administrators (Sections 1, 3, 4, 5, and 6)

Section 1 creates s. 800.101, F.S., to prohibit specified misconduct against students by authority figures. This section defines

- "Authority figure" to mean a person 18 years of age or older who is employed by, volunteering at, or under contract with a school, including a school resource officer.

¹⁸ *Supra*, n. 11.

- “School” to include a private school, a voluntary prekindergarten education program, early learning programs, specified child care facilities deemed public schools,¹⁹ the Florida School for the Deaf and the Blind, and the Florida Virtual School. The term does not include a facility dedicated exclusively to the education of adults.
- “Student” as a person who is enrolled at a school.

This section prohibits an authority figure from soliciting or engaging in the following with a student:

- Sexual conduct;
- A relationship of a romantic or intimate nature where the nature of the relationship is characterized by the expectation of affection or sexual involvement between the parties; or
- Lewd conduct.

A person who violates this prohibition commits a felony of the second degree, punishable as specified in law.²⁰ This provision does not apply to conduct that constitutes an offense subject to reclassification as a sexual offense against a student by an authority figure.²¹

Section 3 amends s. 1001.42, F.S., to require the district school board to include in its adopted policies establishing standards of ethical conduct for instructional personnel and school administrators procedures for reporting alleged misconduct which affects the health, safety, or welfare of students to include all misconduct that involves the engaging in or soliciting sexual, romantic, or lewd conduct with a student. This section also requires the superintendent to report misconduct by instructional personnel or school administrators that would result in disqualification from educator certification or employment to the law enforcement agencies with jurisdiction over the conduct. Section 4 amends s.1001.51, F.S., to include knowingly failing to report this misconduct to law enforcement among the offenses for which a superintendent forfeits his or her salary for one year.

Section 5 amends s. 1012.27, F.S., to require the district school superintendent to notify the parent of a student who was subjected to or affected by the misconduct within 30 days after the date on which the school district learns of the misconduct. The notification must include:

- The alleged misconduct, including which, if any, allegations have been substantiated.
- Whether the district reported the misconduct to the DOE.
- The sanctions, if any, imposed by the school district against the employee.
- The support the school district will make available to the student in response to the misconduct.

Section 6 amends s. 1012.31, F.S., to require public school system employee personnel files to contain a clear indication of the resignation or termination of an employee before an investigation of alleged misconduct by the employee affecting the health, safety, or welfare of a student is concluded. The school district must file in writing any legally sufficient complaints against personnel to the DOE within 30 days after the date on which the subject matter was brought to the school district’s attention, regardless of the status of the complaint.

¹⁹ As described in section 402.3025 (1) of the Florida Statutes.

²⁰ Sections 775.082, 775.083, and 775.084, F.S.

²¹ Section 775.0862, F.S.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not affect state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 810.097, 1001.42, 1001.51, 1012.27, 1012.31, 1012.315, 1012.56, 1012.795, and 1012.796.

IX. This bill creates section 800.101 of the Florida Statutes. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on March 2, 2018:

The committee substitute:

- Adds the following provisions:
 - Deems offenses against students by authority figures as a second-degree felony.
 - Adds a school bus to the definition of “school,” to apply to the provisions in law regarding trespass on school grounds or facilities.
 - Revises standards of ethical conduct for instructional personnel and school administrators to require training to cover misconduct that involves specified conduct that would result in disqualification from educator certification or employment.
 - Requires a school district to notify the Florida Department of Education about all legally sufficient complaints against teachers and administrators and the resignation or termination of a subject of a legally sufficient complaint of misconduct.
 - Requires a district school superintendent to report misconduct by instructional personnel or school administrators to law enforcement agencies and notify parents of a student who was subjected to or affected by specified misconduct within a specified timeframe.
 - Requires the resignation or termination of an employee before the conclusion of an investigation of alleged misconduct affecting the health, safety, or welfare of a student to be clearly indicated in the employee’s personnel file.
- Deletes the following provisions:
 - Provides that a teacher may not be awarded a Career and Professional Education (CAPE) industry certification bonus if the teacher fails to maintain the security of any CAPE industry certification examination or other security protocols.
 - Provides that persons employed as part-time teachers by the district school board are not exempt from the certification requirements for all school-based personnel.
 - Specifies that an adjunct teaching certificate may not be used to fulfill the certification requirements for a person who is employed and renders service as an athletic coach in any public school in Florida.
 - Deletes an outdated reference in current law to the Safety and Security Best Practices developed by the Office of Program Policy Analysis and Government Accountability.

CS by Education on January 22, 2018:

The committee substitute removes from the bill the provision that exempted from background screening employees of the Division of Vocational Rehabilitation who work as service providers for the school district.

B. Amendments:

None.